

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Touch of Paradise LLC

NOTICE OF INTENT TO APPEAR: Paradise Valley Ranch, LLC

CASE 43B-0846-R-2022

43B 190441-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Paradise Valley Ranch LLC filed a notice of intent to appear. On February 21, 2023 Touch Of Paradise LLC filed its Information To Resolve Issue Remarks. On March 9, 2023 Touch Of Paradise LLC filed its Confirmation Of Pre-1973 Modification. On March 14, 2023 Paradise Valley Ranch, LLC's Status Report was filed including its conditional withdrawal of notice of intent to appear. These settlement documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Information To Resolve Issue Remarks includes the following: "[T]he point of diversion legal description for 190441-00 that appeared in the Preliminary Decree reflects a diversion point *used prior to the development of the highway and other significant developments that disrupted the original Trail Creek ditch system.*" (Emphasis added.) The Sworn Statement of Daryl Smith attached to the Confirmation Of Pre-1973 Modification states that Daryl Smith is the grandchild of Warren DePuy who filed the Statement of Claim, grew up on the property, is 64 years old, and has pre-1973 knowledge of the property. The Sworn Statement includes:

Trail Creek and the ditches in the Trail Creek system were changed over time due to the dynamic nature of the Yellowstone River and development in the Paradise Valley such as the construction of the highway in the late 1950s and early 1960s.

I have requested that the points of diversions for Trail Creek water rights 43B

190441-00 and 43B 190432-00 be corrected to the NESESE and the SESWSE of Section 22, Township 3 South, Range 9 East. I can attest that these diversions have been used since prior to 1973 and are the diversions that continue to be used today.

The Preliminary Decree states that the point of diversion is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWNWNE	20	4S	9E	PARK

The point of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESESE	22	3S	9E	PARK
SESWSE	22	3S	9E	PARK

2. The Preliminary Decree also includes the following remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON TRAIL CREEK WITH A PRIORITY DATE PREDATING CASE NO 336, PARK COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

No objection was filed to pursue this possible issue. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim and to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via E-Mail:

Dana Elias Pepper
Bina R. Peters
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771-0477
(406) 599-7424
office@riverandrangelaw.com
bina@riverandrangelaw.com
dana@riverandrangelaw.com

Peter G. Scott
Peter G. Scott Law Offices PLLC
Attorney at Law
682 S Ferguson Ave Ste 4
Bozeman, MT 59718-6491
peter@scott-law.com
office@scott-law.com

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 190441-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TOUCH OF PARADISE LLC
4810 US HWY 89 S
LIVINGSTON, MT 59047 9170

Priority Date: JUNE 21, 1893

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.16 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 109.70

Source Name: TRAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESE	22	3S	9E	PARK

Period of Diversion: APRIL 15 TO JULY 1

Diversion Means: HEADGATE

2		SESWSE	22	3S	9E	PARK
---	--	--------	----	----	----	------

Period of Diversion: APRIL 15 TO JULY 1

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO JULY 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	51.70		E2SE	15	3S	9E	PARK
2	25.00		W2W2SW	14	3S	9E	PARK
3	33.00		NENE	22	3S	9E	PARK

Total: 109.70

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

190432-00

190441-00